

ANALYSIS OF THE AUDITED COMPLAINTS

CHAPTER 11

AUDIT CRITERIA

In order to audit cases in a uniform and consistent manner, the IPA has developed audit forms which it uses as a checklist when evaluating the quality of the investigations conducted by the SJPd. The different audit criteria are intended to highlight some of the most important aspects of the investigations. The audit criteria is different according to the classification of the complaint. Listed below are the different type of complaint classifications (Formal, Procedural, No Boland, Informal, Policy). Following each classification is some of the criteria addressed by the IPA.

FORMAL COMPLAINTS

Formal complaints are those that allege a serious violation of the law or of the SJPd's policies, procedures, rules or regulations by an officer. There were 250 Formal cases audited from

January 1 through December 31, 1998.

Was review requested by the complainant?

A total of 115 complainants or 46% requested the IPA to review their case. Some of these complainants requested review while the investigation was being conducted by the PSCU. Others requested review after the PSCU had completed their investigation of the case. The number of complainants wanting the IPA to review their complaint has gone up every year since the inception of the office.

Was review requested by the complainant?

Yes	115	46%
No	135	54%

Did the IPA request further action from PSCU?

Yes	27	11%
No	223	89%

Did the IPA request further action from PSCU?

The IPA requested further action from the PSCU in 27 or 11% of the Formal cases it reviewed. Requests varied from reopening an investigation to providing the IPA with additional information or documentation.

Did the Auditor attend officer interviews conducted by the PSCU after being notified?

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Notification requested	127	51%
Notice received	46	36%
Interviews attended	25	56%
Interviews not attended	20	44%

Did the IPA agree with the resolution of the complaint?

Yes - Agree	205	82%
No - Disagree	45	18%

Formal complaints are the only class of complaints which provide a formal process for the questioning of the SJPd officers relevant to the investigation of a complaint.

The Auditor attends the officer interviews at her discretion.

Factors such as seriousness of the allegations, status of the officer being interviewed as either a subject or witness officer, and time constraints, form part of her decision. From a total of 250

Formal cases, the IPA requested to be notified of police officer interviews in 127 cases. Of those, the IPA was notified of only 46 interviews. The Auditor attended 25 interviews. The PSCU failed to provide notice to the Auditor for 81 cases.

Recommendation: The PSCU Investigators should document in their case files how notices of

upcoming interviews were given to the IPA. Proof of notice can be documented by saving a copy of the fax notice, email print out, or noting date and time of phone call.

Did the IPA agree with the resolution of the complaint?

This section reflects the number of times the IPA agreed or disagreed with the resolution of the complaint. The IPA disagreed with the finding of the investigation in 45 of the 250 Formal cases even after further action was requested from the PSCU. In 1998, the IPA disagreed with 18% of the formal cases. This is an increase from 1997, where the IPA disagreed with only 9% of the formal cases.

The IPA may disagree with the resolution for various reasons. In some cases the IPA disagreed with the PSCU about the factual circumstances surrounding the

complaint. In these cases, the IPA comes to a different conclusion about what happened during the incident. One reason for the different conclusion may be due to a disagreement over the credibility of a witness or party.

In other cases the facts were not at issue, however, the IPA concluded that the finding was not supported by the facts. For example, the IPA may have a different opinion as to whether the conduct of the subject officer violated an established law or policy.

Another reason for disagreement of some cases was that the PSCU or another unit of the police department did not conduct a proper investigation. The investigation may have been deemed improper because the investigator failed to take specific investigative steps or other biases were detected.

Did the incident give rise to criminal action against the complainant?

Roughly two thirds of the complainants who filed complaints against a police officer were arrested for a crime although criminal charges were not always filed against them. The 36% figure involves complainants who were not accused of violating any laws.

Was the case sent to the Chain of Command for Findings and Recommendations by the PSCU?

Upon completion of the investigation, the PSCU Lieutenant and investigator determine whether the case merits sending to the subject officer's chain of command for findings and recommendation of discipline. Only complaints believed to be sustainable are sent to the Chain of Command for Findings and Recommendations by the PSCU. All complaints alleging unnecessary force require a review by the Assistant Chief before they can be closed.

Did the incident give rise to criminal action against the complainant?

Yes	160	64%
No	90	36%

Was the case sent to Chain of Command for Findings and Recommendations by the PSCU?

Yes	34	14%
No	210	84%
N/A	6	2%

PROCEDURAL COMPLAINTS

Procedural complaints are those that despite the allegation of misconduct, no factual basis supports the allegation because the subject officer's conduct was within procedure. There were 70 Procedural complaints reviewed in 1998.

Was the complaint properly classified?

Yes	66	94%
No	4	6%

Was the procedure properly applied?

Yes	67	96%
No	3	4%

Did the IPA request further action from PSCU?

Yes	1	1%
No	69	99%

Was the complaint properly classified?

The IPA found that four of the Procedural cases should not have been classified as Procedural complaints. Instead, these cases should have been classified and investigated as Formal cases because there was a basis to support a misconduct allegation by the complainant.

Was the procedure properly applied?

The IPA found that in three of the Procedural cases, the subject officer did not follow the proper procedure. Procedural cases

may only be classified as such if the officer followed the correct procedure. Otherwise, the complaint should be investigated as a Formal complaint. This is seven less than in 1997, when the IPA found that in ten cases the subject officer did not follow the proper procedure.

Did the IPA request further action from PSCU?

Requests may vary from reopening an investigation to providing the IPA with additional information or documentation. The IPA requested further action from the PSCU in one of the Procedural cases it reviewed. In some cases, the IPA disagreed with the PSCU's assessments; however, no action was requested because the case was fully investigated but the opinions between the PSCU and the IPA differed.

What is the IPA's finding of the investigation?

The IPA disagreed with the finding of the investigation in one of the 70 Procedural cases even after further action was requested from PSCU.

COMPLAINTS WITHOUT A BOLAND ADMONISHMENT

The "No Boland" complaints are those where the complainant did not sign the required Boland Admonishment. State law requires that the complainant sign an admonishment which provides notice that if the complainant knows the allegations to be false they can be prosecuted. The PSCU conducts a preliminary and not a Formal investigation into these complaints. The IPA reviewed 44 "No Boland" cases.

Was the officer(s) involved in the complaint identified?

Even if the complainant does not return a signed Boland Admonishment, the PSCU attempts to identify the officer(s) involved. This is done in an effort to track patterns in the officer's conduct. When the officer can not be identified by the PSCU, the IPA also notes the efforts made by the PSCU investigator.

Was unnecessary force alleged in this complaint? Class I or class II?

Complaints of unnecessary force where the complainant required medical attention are classified as Class I complaints and must be investigated within 180 days of the date the complaint was initiated. All other complaints must be investigated within 365 days. Three of the "No Boland" cases audited in 1998 were classified as Class I. Two of them were investigated by the PSCU

What is the IPA's finding of the investigation?

Yes - Agree	67	96%
No - Disagree	3	4%

Was the officer(s) involved in the complaint identified?

Yes	38	86%
No	6	14%

Was unnecessary force alleged in this Complaint? Class I or Class II?

Yes - Class I	3	7%
Yes - Class II	11	25%
No	30	68%

Does this complaint involve another allegation, besides unnecessary force, that may warrant further review?

Yes	6	14%
No	38	86%

Was the allegation a minor transgression?

Yes	29	50%
No	29	50%

despite the complainant's failure to return a signed Boland form because of the serious nature of the allegations. The other Class I complaint also involved injuries to the complainant; however, the initial investigation revealed that the injuries were not caused by a SJPD officer.

Does this complaint involve another allegation, besides unnecessary force, that may warrant further review?

In cases where the allegations are particularly serious, the PSCU will conduct an investigation despite the fact that the complainant did not sign a Boland Admonishment. The IPA found that six cases were closed when they should have been investigated due to the seriousness of the allegations. Allegations that should have been investigated included discrimination and theft of property.

INFORMAL COMPLAINTS

Informal complaints are those that involve a minor transgression or where the complainant chose the informal process. These complaints are handled by bringing the matter to the attention of the officer's Chain of Command and his or her immediate supervisor. If the allegations are serious enough or if the allegations tend to show a pattern of misconduct on the part of the subject officer the allegations will be formally investigated despite the complainant's request for the informal process. These complaints are tracked and become part of the officer's PSCU file. The IPA reviewed 58 Informal complaints in 1998.

Was the allegation a minor transgression?

In 29 cases, the IPA found that the transgression was not minor; however, the complainant chose

the informal process or the allegations were not serious enough to require a Formal investigation.

Was the complainant informed that the complaint may be handled formally or informally?

While the PSCU makes the final determination as to the classification of complaints, the complainant's preference is taken into consideration by the PSCU. The IPA, therefore, audits this area of the complaint process.

Was the Complainant aware that he/she could be contacted by the officer's supervisor?

Part of the Informal complaint process is to have the subject officer's supervisor talk to the complainant if the complainant wishes to be contacted. The PSCU has the responsibility to inform the complainant of this option. It is the supervisor's

responsibility to notify the PSCU that he/she has contacted the complainant. In 1997, the percentage of cases where the investigator informed the complainant of this option was slightly lower at 91%.

Did the IPA request further action from the PSCU?

The IPA requested further action from the PSCU in two of the Informal cases it reviewed. The requests were for additional information or documentation.

Was the complainant informed that the complaint may be handled formally or informally?

Yes	12	21%
No	2	3%
Unknown	44	76%

Was the Complainant aware that he/she could be contacted by the officer's supervisor?

Yes	55	95%
No	1	2%
Unknown	2	3%

POLICY COMPLAINTS

Policy complaints pertain to an established policy, properly employed by a Department member, which the complainant understands, but believes is inappropriate or not valid. The IPA reviewed 31 Policy complaints.

Did the IPA request further action from the PSCU?

Yes	2	3%
No	56	97%

Was the complaint properly classified?

Yes	21	68%
No	10	32%

Does the complaint pertain to an established policy?

Yes	29	94%
No	2	6%

Was the policy properly employed by the department member?

Yes	27	87%
No	0	0%
Unknown	4	13%

Was the complaint properly classified?

Policy complaints refer to complaints where the complainant expresses a disagreement with a SJPD policy, not against the officer who was following the policy. In 1998, the IPA found that ten of these cases should not have been classified as such. While the IPA disagrees with how these cases were classified, the IPA does not believe any misconduct occurred at the scene of the incident. The IPA's disagreement is only with the classification of the complaint received.

Does the complaint pertain to an established policy?

The IPA's audit form also reviews the policy which is the subject of the complaint. The corresponding table shows that 29 of the complaints pertained to an established policy. In two cases the complainant alleged that a nonexistent policy should be established by the SJPD.

Was the policy properly employed by the department member?

The IPA looks to the facts of the case to determine if the Department member complied with the Department's established policy. The IPA found 27 cases where the Department member properly employed the SJPD policy. In four cases, the facts were not fully developed by the PSCU and the IPA was unable to form a conclusion.

INQUIRIES

Inquires refer to contacts citizens have with police officers regarding an issue that would not constitute police misconduct. They could also include those minor complaints that are immediately addressed and resolved to the satisfaction of the citizen. A minor concern that is not satisfactorily resolved can become a complaint. There were a total of 377 inquiries in 1998.

Was this case properly classified as an inquiry?

In some cases the IPA had to confer with the PSCU or obtain tapes and records before agreeing with the Inquiry disposition. In two cases, the IPA believed that the allegations warranted a complaint and the PSCU failed to investigate it properly. Hence, the IPA agreed with all but two cases.

SPECIAL AUDIT OF UNNECESSARY FORCE CLASS I CASES

In 1994, the IPA recommended that supervisors be required to conduct on-scene investigations following a use of force incident where the suspect required medical attention (Class I use of force). This recommendation was adopted by the SJPD. What follows is a special audit to determine how well the new procedure is being implemented. In 1998, the IPA audited a total of 67 Class I cases.

What was the degree of injury?

Minor injuries refers to injuries such as scratches and bruises. Moderate injuries are those that involve cuts or large scrapes. Major injuries involve fractures or permanent injury. In 1998, most of the injuries were either major or moderate. The corresponding table shows that only 11 % of injuries were minor.

Was the need to use force explained in a police report?

The corresponding table shows that this question is not applicable in eight cases. These are cases that were originally thought to be Class I cases, but were later determined not to be. In these eight cases there was no force used or the injury was not caused by the officers.

Was this case properly classified as an inquiry?

Yes	375%
No	2%

What was the degree of the injury?

Minor	8	12%
Moderate	25	37%
Major	30	45%
None	1	1%
Unknown	3	4%

Was the need to use force explained in a police report?

Yes	55	82%
No	4	6%
N/A	8	12%

Was a supervisor called to the scene?

Yes	39	58%
No	19	28%
N/A	5	7%
Unknown	4	6%

Was a supplemental report written by a supervisor?

Yes	26	39%
No	30	45%
N/A	5	7%
Unknown	6	9%

Was a statement taken from the complainant?

Yes	18	27%
No	39	58%
N/A	5	7%
Unknown	5	7%

What type of evidence was collected?

Photographs	34	32%
Video taping	1	1%
Witness statements	25	23%
None	13	12%
Unknown	4	4%
Other	30	28%

Was a supervisor called to the scene?

The corresponding table shows that a supervisor was called to the scene in 39 of the Class I cases.

This question may not be applicable because despite the complainant's subsequent allegations of unnecessary use of force, there was nothing at the time of the event that would lead the supervisor to believe that Class I use of force was used. In four cases, the case file did not reveal whether or not a supervisor had responded to the scene. It is therefore unknown whether or not a supervisor responded to the scene.

Was a supplemental report written by a supervisor?

Out of 67 Class I complaints, the IPA found that a supervisor had written a supplementary report in only 26 cases. The IPA and the PSCU would like to see a supplementary report written in all Class I cases.

Was a statement taken from the complainant?

As part of the on site investigation, supervisors should take a statement from the complainant regarding his/her complaint. The statement could be used to corroborate the complainants allegations or to disprove his/her subsequent inconsistent allegations. In the past, these statements have been used to do both.

What type of evidence was collected?

The principle reason to conduct an on site investigation of Class I cases is to preserve evidence that would otherwise be lost if the only investigation was conducted later. Obtaining physical evidence and contacting possible witnesses is a crucial part of the on site investigation. The table shows the type of evidence that was collected by the supervisor. The "other" category includes the supervisor's own observations, articles of clothing, weapons etc.

Was the case sent to BOI for investigation?

Cases are sent to the Bureau of Investigations (BOI) when it appears that the subject officers could be prosecuted criminally for the alleged conduct. In 1998, no cases were sent to BOI from other departments including the PSCU.

Recommendations: Supervisors responding to the scene of a serious use of force should write a supplemental report documenting their investigation and observations.

Was the case sent to BOI for investigation?

Yes	0	0%
No	64	96%
N/A	2	3%
Unknown	1	1%

